

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

2014 FEB 26 PM 3: 37

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
)
Olson Explosives, Inc.) Docket No. CWA-07-2014-0036
)
) FINDINGS OF VIOLATION,
Respondent) ORDER FOR COMPLIANCE
)
)
Proceedings under Section 309(a) of the)
Clean Water Act, 33 U.S.C. § 1319(a))
_____)

1. The following Findings are made and Order issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency (EPA) by Section 309(a) of the Clean Water Act (CWA or the Act), 33 U.S.C. § 1319(a), and as delegated by the Administrator to the Regional Administrator of EPA, Region 7, and further delegated to the Director of the Water, Wetlands & Pesticides Division in EPA, Region 7.

2. Olson Explosives, Inc. (Respondent) owns and operates a formulation and distribution facility for explosives located at 1837 Trout Run Road, Decorah, IA 52101.

3. EPA, together with Respondent, enters into this Section 309(a)(3) Order for Compliance on Consent in order to carry out the goals of the CWA, 33 U.S.C. § 1251 *et seq.*, to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

4. It is the parties’ intent through this agreement to address Respondent’s noncompliance with the requirements of its industrial stormwater permit issued pursuant to 33 U.S.C. § 1342(p), in violation of Section 301 of the CWA, 33 U.S.C. § 1311. Specifically, Section 301 of the CWA, 33 U.S.C. § 1311, provides that except as in compliance with certain specified provisions of the CWA, the unauthorized discharge of any pollutant into the waters of the United States by any person is unlawful.

5. By entering into this Order, Respondent (1) consents to and agrees not to contest EPA's authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein. Respondent also waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondent may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review of this Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

STATUTORY AUTHORITY

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

7. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

8. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires, in part, that a discharge of stormwater associated with an industrial activity must conform with the requirements of a NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

9. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

10. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

11. The regulations at 40 C.F.R. §122.26(b)(14) establish requirements for stormwater discharges associated with industrial activity, including discharges from facilities with industrial classifications encompassing chemicals and allied products.

12. The Iowa Department of Natural Resources (IDNR) is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

13. IDNR implemented a General Permit for the discharge of stormwater under the NPDES. The permit governs stormwater discharges associated with industrial activity.

FINDINGS

14. Respondent is a corporation organized and operating under the laws of Iowa and is a “person” for purposes of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

15. At all times relevant to this action, Respondent’s facility was engaged in industrial activities that include the formulation and distribution of chemicals and allied

products, specifically, explosives. Stormwater that comes into contact with these materials contains “pollutants” as defined by Section 502(6) of the Act, 33 U.S.C. § 502(6).

16. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s facility, as authorized by Respondent’s NPDES permit. As such, Respondent’s facility constitutes a “point source” as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

17. Respondent’s facility discharges into an unnamed tributary of Trout Run, which then flows into Trout Run and onward into the Upper Iowa River, which are “navigable waters” and “waters of the United States” as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7) and its implementing regulation at 40 C.F.R. § 122.2.

18. Respondent first applied for and was issued NPDES permit coverage on October 1, 1992. IDNR issued the Respondent’s current NPDES Permit Authorization No. 1832-1815 under the general permit described in Paragraph 10 above, which will expire in October 2017. The permit governs stormwater discharges associated with industrial activity.

19. Between August 21 and 22, 2013, an EPA inspector performed an inspection of Respondent’s facility under the authority of Section 308(a) of the CWA, 33 U.S.C. §1318(a). The purpose of the inspection was to evaluate Respondent’s compliance with the CWA.

Count 1

Failure to Develop an Adequate Stormwater Pollution Prevention Plan

20. The facts stated in Paragraphs 14 through 19 above are herein incorporated.

21. NPDES General Permit No. 1, Part III, Section C.4, Paragraph A states that each SWPPP plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources.

22. The EPA inspection referenced in Paragraph 19 above found that truck washing with soap occurs at the dispatch facility in such a way that used wash water has a potential to flow into a storm drain inlet near the washing location. This wash water contains surfactants and would constitute a prohibited non-storm water discharge if it reaches the storm drain inlet. Because these pollutants could be discharged during dry weather, the facility is required to identify them in the SWPPP and ensure that they are not discharged from the site, per the prohibition in Part III Section A of the permit. Neither truck washing as an activity, nor surfactants as a pollutant, were identified in the SWPPP. Failure to identify all potential sources of pollutants is a violation of the stormwater permit.

23. Part III, Section C.4, Paragraph A(1) of the general permit states that each SWPPP shall include, at a minimum: a site map showing an outline of the drainage area of each storm water outfall; each existing structural control measure to reduce pollutants in storm water runoff; and each surface water body.

24. The EPA inspection referenced in Paragraph 19 above found that the SWPPP does not include a map with this information for either the dispatch facility or the magazine facility. A map for each facility showing this information must be included in the SWPPP or included by reference if it exists in a Spill Pollution Control and Countermeasures (SPCC) plan or other plan required by a NPDES permit, as allowed by Part III, Section C.4, Paragraph A of the general permit. Failure to include site maps in the SWPPP is a violation of the stormwater permit.

25. Part III, Section C.4, Paragraph A(4) of the general permit states that each SWPPP shall include, at a minimum: for each area of the plant that generates storm water associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an estimate of the types of pollutants which are likely to be present in storm water discharges.

26. The EPA inspection referenced in Paragraph 19 above states that the SWPPP does not include a description of the drainage patterns at the dispatch facility. This information must be included in the SWPPP or included by reference if it exists in an SPCC plan or other plan required by a NPDES permit, as allowed by Part III, Section C.4, Paragraph A of the general permit. Failure to include drainage information in the SWPPP is a violation of the stormwater permit.

27. Part III, Section C.4, Paragraph B(3) of the general permit states that the plan shall describe a preventive maintenance program that involves inspection and maintenance of storm water management devices (e.g. cleaning oil/water separators, catch basins) as well as inspecting and testing plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

28. The SWPPP obtained during the EPA inspection referenced in Paragraph 19 above includes a generic statement about doing ongoing preventive maintenance. However, this description does not include provisions for doing inspections and maintenance of stormwater management devices or measures for uncovering conditions that could cause breakdowns or failures resulting in pollutant discharges. Failure to include the required components of a preventive maintenance program is a violation of the stormwater permit.

29. Part III, Section C.4, Paragraph B(6) of the general permit states that the plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the source of pollutants). Based on an assessment of the potential of various sources at the plant to contribute pollutants to storm water discharges associated with industrial activity (see Part III.C.4.B(2) of this permit), the plan

shall provide that measures determined to be reasonable and appropriate shall be implemented and maintained.

30. The SWPPP obtained during the EPA inspection referenced in Paragraph 19 above does not consider traditional storm water management practices for controlling pollutants once they have left their source. Failure to account for any such appropriate practices in the SWPPP is a violation of the stormwater permit.

31. Part III, Section C.4, Paragraph B(7) of the general permit states that the plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify measures to limit erosion.

32. The SWPPP obtained during the EPA inspection referenced in Paragraph 19 above does not identify areas of the site with a high potential for significant soil erosion or identify measures to limit erosion. Failure to account for these requirements of the SWPPP is a violation of the stormwater permit.

33. Respondent's failure to develop an adequate stormwater pollution prevention plan is a violation of the terms and conditions of the Respondent's NPDES permit, and as such is a violation of Sections 301(a) and 402 of the CWA, 42 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Count 2

Failure to Implement Best Management Practices

34. The facts stated in Paragraphs 14 through 19 above are herein incorporated.

35. Part III, Section C.4, Paragraph B(8) of the general permit states that Employee training programs shall inform personnel at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

36. The EPA inspection referenced in Paragraph 19 above found that the permittee has not conducted employee training on topics related to SWPPP implementation since 2009; nor does the SWPPP identify periodic dates for when such training should have occurred. Failure to conduct periodic employee training is a violation of the stormwater permit.

37. Part III, Section C.4, Paragraph B(10) of the general permit states that the plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include a description of the results of any test for the presence of non-storm discharges, the method used, the date of any testing, and the on-site drainage points that were directly observed during the test.

38. The SWPPP obtained during the EPA inspection referenced in Paragraph 19 above did not include a certification that non-storm discharges are not present in discharges from the facility, along with the required supporting information. Failure to account for this requirement of the SWPPP is a violation of the stormwater permit.

39. Part III, Section C.4, Paragraph C of the general permit requires that qualified personnel shall inspect designated equipment and plant area at appropriate intervals specified in the plan, but, except as provided in paragraphs III.C.4.C.(4) and (5), in no case less than once a year.

40. The EPA inspection referenced in Paragraph 19 above found that the permittee has not conducted a visual inspection of the scope required by the permit at least annually since 2009. Failure to visually inspect the facility is a violation of the stormwater permit.

41. Respondent's failure to implement best management practices is a violation of the terms and conditions of the Respondent's NPDES permit, and as such is a violation of Sections 301(a) and 402 of the CWA, 42 U.S.C. § 1311(a) and § 1342, and implementing regulations.

42. Pursuant to Section 309(a)(5)(A) of the Act, 33 U.S.C. § 1319(a)(5)(A), and having taken into account the seriousness of the violations, and considering further that Respondent may undertake to modify its SWPPP and to implement best management practices in order to comply with the requirements of its permit, EPA finds that 60 days is a reasonable time for Respondent to comply with the aforementioned permit and regulatory requirements.

ORDER

Based on the FINDINGS OF FACT and FINDINGS OF VIOLATION set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), EPA hereby ORDERS, and Respondent hereby AGREES to take, the actions described below:

43. Respondent shall immediately comply with its NPDES permit and the CWA.

44. Within 60 days of receipt of this Order, Respondent shall provide to EPA a detailed report describing actions Respondent has taken and will take to correct the violations cited in Paragraphs 21 through 41. The report shall include an explanation of why such actions are sufficient to prevent recurrence of the cited violations and a schedule for any future actions necessary to correct or prevent recurrence of the cited violations. The report shall be sent to:

Michael Boeglin, Compliance Officer (or successor)
United States Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

45. The above-referenced report and schedule shall be incorporated into the terms of this Order.

GENERAL PROVISIONS

46. Failure to comply with the terms of this Section 309(a)(3) Compliance Order may result in your liability for statutory civil penalties under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should EPA commence an action seeking penalties for violations of this Compliance Order, a United States District Court may impose civil penalties if the court determines that you have violated the Act and failed to comply with the terms of the Order.

47. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of his responsibility to obtain any required local, state, and/or federal permits.

48. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. EPA reserves the right to enforce the terms of this Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

Access and Requests for Information

49. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect property owned or operated by Respondent and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

50. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Parties Bound

51. This Order shall apply to and be binding upon the Respondent, his agents, successors and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this Order.

Effective Date

52. The terms of this Order shall be effective and enforceable on the Effective Date, which is the date this Order is signed by EPA. All time periods herein shall be calculated therefrom unless otherwise provided in this Order.

Termination

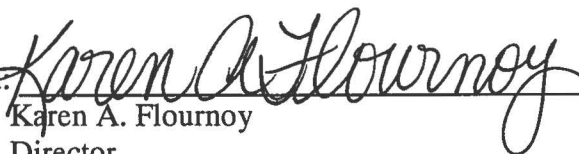
53. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA.

Signatories

54. The undersigned for each party has the authority to bind each respective Party to the terms and conditions of this Order. The Order may be signed in part and counterpart by each Party.

Dated this 23rd day of January 2014

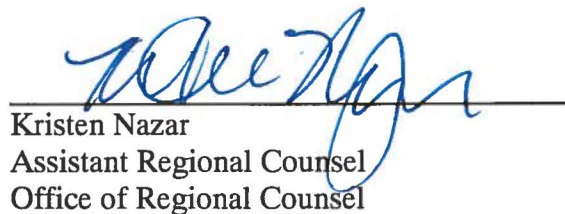
Signed:



Karen A. Flournoy

Director

Water, Wetlands & Pesticides Division



Kristen Nazar

Assistant Regional Counsel

Office of Regional Counsel

For Respondent:



Authorized Representative
Olson Explosives, Inc.

Mark L. OLSON

2/13/14

Date

IN THE MATTER OF Olson Explosives, Inc., Respondent
Docket No. CWA-07-2014-0036

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy emailed to Attorney for Complainant:

nazar.kristen@epa.gov

Copy by Certified Mail to Respondent:

Mr. Kenneth L. Olson
Registered Agent
Olson Explosives, Inc.
1837 Trout Run Road
Decorah, Iowa 52101

and by First Class Mail to:

Barbara Lynch
Chief, Field Services and Compliance Bureau
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50309

Joe Sanfilippo
Supervisor, Field Office #1
Iowa Department of Natural Resources
909 West Main Street, Suite 4
Manchester, Iowa 52057

Dated: 2/27/14



Kathy Robinson
Hearing Clerk, Region 7